

**PART 3 of the FIRE (SCOTLAND) ACT 2005  
and related subordinate legislation**

<b>LEGISLATION OVERVIEW</b>
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## LEGISLATION OVERVIEW

### Introduction

1. This note contains an overview of the legislation which forms or is consequential to the fire safety regime for non-domestic premises in Scotland, namely Part 3 of the Fire (Scotland) Act 2005, as amended ("the 2005 Act") and associated subordinate legislation. It should be noted that separate Explanatory Notes on the 2005 Act are available, although these were prepared during the passage of the Bill and do not take account of changes that have subsequently been made to the text of the Act.
2. In considering the content of this overview it should be remembered that the 2005 Act and associated orders and regulations (as amended from time to time) take precedence. This note should therefore be read in conjunction with the relevant legislation and is not, and is not meant to be, a comprehensive description of the legislation. Users are advised to refer to the legislation referred to throughout this document as the definitive source of powers, duties and obligations and, if in doubt about any aspect, to seek independent legal advice.
3. All sections of Part 3 of the 2005 Act commenced in full on 1st October 2006. Part 3 introduced a fire safety regime for Scotland which replaced previous fire safety legislation. The principal legislation which was repealed or revoked was:
  - the Fire Precautions Act 1971 ("the 1971 Act")
  - the Fire Certificates (Special Premises) Regulations 1976 ("the 1976 Regulations").
  - the Fire Precautions (Workplace) Regulations 1997 ("the 1997 Regulations")
  - the general fire safety provisions of the Management of Health and Safety at Work Regulations 1999 ("the 1999 Regulations")
4. Consequential modifications were also made to other UK and Scottish primary and subordinate legislation to reflect Part 3 of the 2005 Act coming into force.
5. General fire safety is within the legislative competence of the Scottish Parliament with some exceptions. Process fire precautions is a matter reserved to the UK Parliament under Section H2 of Schedule 5 to the Scotland Act 1998. The obligation in the fire safety regime to take fire safety measures does not include an obligation to take process fire precautions. The term "process fire precautions" is not defined in statute but is widely used and understood as being distinct from general fire safety. Essentially, "process fire precautions", which include risk assessment, are designed to prevent the outbreak or spread of fire from any work processes, taking into account process risk which can be perceived as the danger, due to the work process, that fire will break out. This is to be distinguished from "general fire safety" which relates to the means of fire warning, fire fighting and escape, thereby dealing with the means to ensure people can escape safely once a fire has started.
6. To reduce duplication and prevent overlapping regimes, the effect of fire safety conditions, terms and restrictions imposed by licensing and registration schemes

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has been restricted and the potential application of the Health and Safety at Work etc Act 1974 (“the 1974 Act”) to general fire safety has been disapplied although there are some exclusions and a savings provision.

7. In considering the fire safety element of the 2005 Act, it should be noted that amendments have been made to Part 3 by S.I. 2005/2060 (The Fire (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005) and S.S.I. 2005/352 (The Fire (Scotland) Act 2005 (Relevant Premises) Regulations 2005).
8. S.I. 2005/2060 is a UK Government order made under section 104 of the Scotland Act 1998 which, amongst other things, makes changes relevant to the application of the fire safety regime in Scotland. It applies the fire safety regime to defence premises and to ships (with some exceptions) and the HSE and Defence Fire and Rescue Service are made enforcing authorities. Although these are reserved matters, section 104 enables the UK Government to make provision concerning reserved matters in consequence of provision made by or under an Act of the Scottish Parliament such as the Fire (Scotland) Act 2005.
9. S.S.I. 2005/352 amended the definition of relevant premises in section 78 in respect of construction sites and premises to which Part 1 of Schedule 1 to the 1976 Regulations applied. This reflected a transfer of legislative competence to the Scottish Parliament by virtue of S.I. 2005/865 (The Scotland Act 1998 (Modifications of Schedule 5) Order 2005).
10. Reference should also be made to the provisions of the Fire Safety (Scotland) Regulations 2006 (S.S.I. 2006/456) (“the 2006 Regulations”). The fire safety regime in Scotland is contained both in primary legislation (the 2005 Act) and subordinate legislation (the 2006 Regulations). Both impose obligations on dutyholders, neither can be considered in isolation.
11. Some of the obligations imposed in the regime are intended to ensure continuing compliance with EC directives on workplace health and safety.
12. Information about the new regime and guidance to assist dutyholders comply with their new responsibilities are available on the firelaw website at [www.infoscotland.com/firelaw](http://www.infoscotland.com/firelaw).

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### Reference table

13. This table contains the number and name of the subordinate legislation which is relevant to the fire safety regime.

**Table.** Statutory Instruments relevant to fire safety

<b>STATUTORY INSTRUMENTS</b>	
<b>S.I. 2005/2060</b>	The Fire (Scotland) Act 2005 (Consequential Provisions and Modifications) Order 2005
<b>S.S.I. 2005/352</b>	The Fire (Scotland) Act 2005 (Relevant Premises) Regulations 2005
<b>S.S.I. 2006/456</b>	The Fire Safety (Scotland) Regulations 2006
<b>S.S.I. 2006/457</b>	The Fire (Scotland) Act 2005 (Consequential Modifications and Savings) (No. 2) Order 2006
<b>S.S.I. 2006/458</b>	The Fire (Scotland) Act 2005 (Commencement No. 3 and Savings) Order 2006
<b>S.S.I. 2006/475</b>	The Fire (Scotland) Act 2005 (Consequential Modifications and Savings) Order 2006

These instruments can be accessed at [www.infoscotland.com/firelaw](http://www.infoscotland.com/firelaw)

**PART 3 OF THE FIRE (SCOTLAND) ACT 2005**

**CHAPTER 1 - FIRE SAFETY DUTIES**

14. Chapter 1 contains sections which impose obligations in terms of general fire safety on employers, other dutyholders and employees. There will often be a number of different dutyholders with obligations for each relevant premises to which Part 3 applies.

**Section 53 - Duties of employers to employees**

15. **Section 53** contains an employer's duty to ensure the fire safety of employees in respect of a workplace. 'Employee' and 'workplace' are defined in section 79. This section only applies to workplaces that are 'relevant premises' as defined in section 78. The effect of this section is to give employers responsibility for the safety of their employees in case of fire. This applies even where others also have obligations in respect of the premises. An employer's obligations in respect of the fire safety of non-employees, sits within section 54.

16. **Subsection (1)** identifies that the employer's level of duty is to ensure the fire safety of employees in the workplace 'so far as is reasonably practicable'. Reasonably practicable is a standard lesser than practicable. Reasonably practicable is about weighing the quantum of risk against the sacrifice involved in the measures necessary to avert that risk. Thus the seriousness of the risk is weighed against the difficulty, effort and cost of removing or reducing the risk. In considering cost, no allowance is made for the size, nature or profitability of the undertaking concerned. Measures should be taken unless the sacrifice involved in removing a risk is grossly disproportionate to the benefits of risk reduction that would be achieved by that sacrifice.

17. **Subsection (2)** requires an employer to carry out a fire safety risk assessment of the workplace to identify risks and to take fire safety measures which are necessary to achieve compliance with subsection (1). The obligations apply whether or not the requirements relate to matters within their control. There is therefore a difference between this duty and that found in section 54. In section 54 persons who have control of premises to a certain extent, have a duty only to the extent of that control.

18. **Subsection (3)** requires that when a fire safety risk assessment has been carried out, an employer must review the assessment in accordance with regulations, and fire safety measures that are identified as necessary, as a result of this review should be taken to achieve compliance with the general duty under subsection (1). Regulations 3 to 6 of the 2006 Regulations contain the review requirements.

19. **Subsection (4)** identifies that the 'fire safety measures' referred to in subsections (2) and (3) are the measures listed in schedule 2 to the Act. Paragraph 2 of schedule 2 makes it clear that these measures do not include process fire precautions.

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### Section 54 – Duties in relation to relevant premises

20. **Section 54** identifies the persons who have responsibility for the fire safety of premises to which Part 3 applies, to ensure the fire safety of 'relevant persons' in relevant premises. "Relevant persons" is defined in section 79 and are persons who are or may be lawfully in the premises and persons in, or who may be in, the immediate vicinity of the premises whose safety would be at risk in the event of fire in the premises. Employees of a fire and rescue authority or a joint fire and rescue board are excluded from the definition when they are engaged in operational tasks. "Operational task" is defined in section 79.
21. In respect of workplaces, whereby section 53 requires an employer to ensure the fire safety of employees, section 54 imposes obligations on an employer to ensure the safety of non employees, to the extent that the employer has control of premises. Where an employer requires to carry out a fire safety risk assessment by virtue of both section 53 and section 54, then that employer's employees are not considered relevant persons for the purpose of section 54 by virtue of the definition of relevant person in section 79. Such employees are already protected by the section 53 duty. Section 54 may however impose obligations on non-employers where they have control of premises, in respect of the fire safety of an employer's employees.
22. **Subsections (1) and (2)** require that a person who has control to any extent of relevant premises must carry out a risk assessment to identify fire safety risks to relevant persons in respect of harm caused by fire in the relevant premises and take fire safety measures which are necessary to ensure the safety of relevant persons. This duty applies to all persons who have control of relevant premises and applies to the extent of that control. Fire safety measures to be taken are those which it is reasonable for a person in that position to take to ensure the safety of relevant persons in respect of harm caused by fire in the premises.
23. Where the person in control of relevant premises under subsection (1) is neither the owner nor a person carrying on an undertaking, **subsection (3)** requires the owner of the relevant premises to carry out a risk assessment and take necessary fire safety measures under subsection (2). This is in addition to the obligations which sit with other persons who have control of premises.
24. **Subsection (4)** extends the requirement to carry out a fire safety risk assessment and put in place fire safety measures, to persons who have an obligation, of any extent, as a result of tenancy or contract in respect of maintenance, repair or fire safety, to the extent of their obligation.
25. **Subsection (5)** requires the persons who have an obligation to carry out a fire safety risk assessment under section 54, to review that fire safety risk assessment in accordance with regulations and to take such fire safety measures as is reasonable for a person in that position to take. The duty to review the assessment is in regulation 3 of the 2006 Regulations.

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### **Section 55 – Taking of measures under section 53 or 54: considerations**

26. While sections 53 and 54 contain provision for the taking of fire safety measures, section 55 lists considerations which should be taken into account when dutyholders are taking these fire safety measures. These measures were previously applied to fire safety by regulation 4 of the 1999 Regulations where they are described as general principles of prevention.

### **Section 56 – Duties of employees**

27. This section contains duties which are imposed on an employee while at work. 'At work' is defined in section 79. Every employee should take reasonable care for their own safety in respect of fire and of any other relevant persons who may be affected by their acts or omissions at work. The employee should also co-operate with the employer, so far as is necessary to enable the employer to comply with their obligations and duties under Part 3 of the Act. This is similar to the duty in section 7 of the 1974 Act.

### **Section 57 – Risk assessments: power to make regulations**

### **Section 58 – Scottish Ministers' power to make regulations about fire safety**

### **Section 59 – Power to make further provision for protection of fire-fighters**

28. Sections 57 to 59 enable regulations to be made in connection with Part 3 of the Act.

### **Section 60 – Special case: temporary suspension of Chapter 1 duties**

29. **Section 60** seeks to ensure that fire safety duties will not prevent armed forces, police constables and other persons prescribed in regulations from carrying out their normal duties.

30. **Subsection (1)** disapplies the Chapter 1 duties where they would prevent certain persons from carrying out operational duties, but only during the period when the person is carrying out those operational duties. **Subsection (2)** identifies the category of person that this exception applies to, namely the armed forces of the crown, visiting forces, police constables and others as may be prescribed by regulations. Until the power to prescribe further persons under this regulation is exercised, a saving is made in S.S.I. 2006/457 which continues in force a provision in the 1997 Regulations which disapplied fire safety regulations in respect of emergency workers.

31. **Subsection (3)** provides a qualification on the extent of the disapplication. Where the application of Chapter 1 duties to a person are temporarily suspended by virtue of section 60, that person must ensure so far as possible the safety of relevant persons in respect of harm from fire.

32. **Subsection (4)** provides a definition of 'operational duties' for the purpose of this section.

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### CHAPTER 2 – ENFORCEMENT

33. **Chapter 2** contains provisions in respect of enforcing authorities and enforcement powers

#### **Section 61 – Enforcing authorities**

34. **Section 61** identifies those authorities which will enforce the legislation and includes related enforcement provisions. The categories are clear but in the event of doubt as to who is the appropriate enforcing authority for individual premises or the extent of an enforcing authority's responsibility (such as where premises fall within more than one description or is put to a different functional use at different times) enforcing authorities should discuss and agree responsibilities on the basis of legal advice received.

35. **Subsection (1)** requires each enforcing authority to enforce the Chapter 1 duties, while **Subsection (2)** requires that in carrying out their duty, enforcing authorities will have regard to any guidance given by the Scottish Ministers.

36. **Subsection (3)** allows enforcing authorities to appoint enforcement officers for the purpose of carrying out the enforcement duty. Previous legislation used the term, 'inspector', but this has been replaced by 'enforcement officer'.

37. **Subsections (4) and (5)** provide that the Chief Inspector of Fire and Rescue Authorities, in the capacity of an enforcing authority, can appoint as an enforcement officer, a person who is an enforcement officer appointed by a relevant authority. This appointment must be authorised in writing and must be made with the consent of the relevant authority. This is an updated equivalent of the arrangement previously contained in section 40(4) of the 1971 Act. The use of this arrangement could, for example, allow an enforcement officer of a joint fire and rescue board (or fire and rescue authority) to carry out a fire safety audit in premises for which the Chief Inspector of Fire and Rescue Authorities is the enforcing authority.

38. **Subsection (6)** repeats the constraint that, in Scotland, an enforcing authority cannot institute proceedings.

39. **Subsection (7)** gives relevant authorities the power to arrange with the Health and Safety Commission for such of the authority's functions under Part 3, to be performed on its behalf by the Health and Safety Executive in relation to any particular workplace. This continues the provision that was in section 18(2) of the 1971 Act. **Subsection (8)** is a provision which allows the same arrangement to be made with other persons, to be prescribed by regulations. This power has been used to make regulation 25 of the 2006 Regulations which allows the making of an arrangement between a relevant authority and the Office of Rail Regulation.

40. **Subsection (9)** (as amended by S.I. 2005/2060) specifies the five enforcing authorities for Part 3 in respect of relevant premises. There has been some

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transfer of responsibilities in respect of certain premises when compared to previous fire safety legislation. The enforcing authorities and the premises for which they have responsibility are:

- The **Health and Safety Executive (HSE)** in respect of
  - i) certain nuclear installations as specified;
  - ii) a ship which is in the course of construction, reconstruction, conversion or repair by persons other than the master and crew of the ship; or
  - iii) a workplace which is or is on a construction site within the meaning of regulation 2(1) of the Construction (Health, Safety and Welfare) Regulations 1996, (other than sites to which regulation 33(1) applies: these are sites in otherwise occupied premises).
- The **Defence Fire and Rescue Service** in respect of:
  - i) Relevant premises occupied solely for the purposes of the armed forces of the Crown other than HM Ships which are subject to construction, reconstruction, conversion or repair;
  - ii) Relevant premises occupied solely by visiting forces or certain designated international headquarters or defence organisations; or
  - iii) Relevant premises which are situated within premises occupied solely for the purposes of the armed forces of the Crown, but not themselves so occupied, other than ships subject to construction, reconstruction, conversion or repair by persons other than the master and crew of the ship.
- The **local authority** in respect of:
  - i) A major sports ground which requires a safety certificate under section 1 of the Safety of Sports Grounds Acts 1975, or
  - ii) A sports ground to which Part III of the Fire Safety and Safety of Places of Sport Act 1987 applies (a ground in which there is a regulated stand); and the regulated stand itself.

This reflects a change in enforcement responsibility; as previously a relevant authority was the enforcing authority for the workplace fire precautions legislation<sup>1</sup> in these sports grounds.

- The **Chief Inspector of Fire and Rescue Authorities** in respect of relevant premises where Chapter 1 duties fall to:
  - The Crown (other than as set out above), or
  - The UK Atomic Energy Authority (other than nuclear premises if they fall to HSE enforcement).

This reflects a change in approach in describing Crown premises: previous fire safety legislation used the descriptions 'owned by the Crown' and 'occupied by the Crown'.

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<sup>1</sup> Workplace fire precautions legislation is defined in the 1997 Regulations

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- The **Relevant Authority** (as defined in section 6) (Joint Fire and Rescue Board/Fire and Rescue Authority) in respect of all other relevant premises. Where premises are relevant premises and they do not fall within the responsibility of the preceding enforcing authorities, then enforcement will fall to the relevant authority. This reflects a change in enforcement responsibility. A relevant authority is now enforcer for some premises which previously fell to another enforcer, such as some sites to which the 1976 Regulations applied, and also for some premises which were outwith the scope of previous fire safety law.

41. **Subsection (10)** allows Scottish Ministers, by regulation, to modify the enforcing authorities and the premises for which they are responsible.

### Section 62 - Powers of enforcement officers

42. **Section 62** sets out the powers that enforcement officers have in carrying out enforcement duties in respect of relevant premises. These powers can only be exercised as is necessary to enforce the fire safety regime by a person who has been appointed as an enforcement officer by virtue of section 61(3) of the Act. The powers are similar to the powers of inspectors previously contained in section 19 of the 1971 Act but are expanded to more closely match the powers of health and safety inspectors under the 1974 Act.

43. **Subsection (1)** empowers an enforcement officer to do anything necessary for the purpose of carrying out enforcement duties while **subsection (2)** contains a list of specific powers for enforcement officers in respect of relevant premises.

44. **Subsection (3)** requires an enforcement officer to provide evidence of authority before or when exercising the power of entry, if requested.

45. **Subsection (4)** requires that if an enforcement officer uses the power to take samples, a notice must be left with a Chapter 1 dutyholder at the premises confirming the action and giving details of the article or substance. If it is impractical to leave the notice with a person, the notice should be fixed in a prominent position at the relevant premises. A portion of the sample should be given to that person if this is practical.

46. **Subsection (5)** refers to an enforcement officer carrying out the power to dismantle an article causing or thought likely to cause danger. The enforcement officer is required to seek specialist advice, if considered necessary, to determine if there is any danger involved in the proposal. This is a common sense safeguard which would apply when dealing with situations or items which are beyond the knowledge and experience of the enforcement officer.

47. **Subsection (6)** requires that when an enforcement officer exercises the enforcement powers to inspect, copy, measure, test or dismantle, this should be carried out in the presence of a Chapter 1 dutyholder in the premises, if requested.

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48. **Subsection (7)** requires that if an enforcement officer uses the power to take possession of an article or substance, a notice must be left with a Chapter 1 dutyholder at the premises confirming the action and giving details. If it is impractical to leave the notice with a person, it should be fixed in a prominent position at the premises.
49. **Subsection (8)** considers a situation where an enforcement officer may have entered premises which are unoccupied or where the occupier is not present. The enforcement officer on leaving must leave these premises as secure against entry as they were when found.

### Section 63 – Prohibition notices

50. **Section 63** provides that an enforcing authority is able to prohibit or restrict the use of relevant premises in serious cases by use of a prohibition notice. Prohibition notices are based on the previous provisions of section 10 of the 1971 Act and the power is broadly comparable. It is designed for the more serious cases to prevent loss of life or serious injury. Existing prohibition notices issued under the 1971 Act continue in force by virtue of a saving provision in article 3 of S.S.I. 2006/475. The rules for the serving of documents are contained in section 76 and regulation 27 of the 2006 Regulations.
51. **Subsection (1)** empowers an enforcing authority to issue a prohibition notice. The provision in the 1971 Act whereby the notice must be served on the occupier of premises is maintained, to ensure that the persons at risk are informed immediately.
52. **Subsection (2)** identifies that the circumstances which justify a prohibition or restriction, involves or will involve a risk to relevant persons so serious that use of the relevant premises ought to be prohibited or restricted. **Subsection (3)** specifies that in assessing the seriousness of the risk to relevant persons an enforcing authority must in particular have regard to anything affecting relevant persons' escape from the relevant premises in the event of fire.
53. **Subsection (4)** specifies what a prohibition notice should contain.
54. **Subsection (5)** provides that a prohibition or restriction contained in a prohibition notice shall take effect immediately it is served if the enforcing authority consider that the risk of serious personal injury is or will be imminent, and in any other case will take effect at the end of the period specified in the notice.
55. **Subsection (6)** provides that a prohibition notice may specify remedial steps to be taken. This optional feature in a prohibition notice is likely to have less relevance than it did under the 1971 Act, given the wider enforcement powers now available to enforcing authorities.
56. **Subsection (7)** requires an enforcing authority, before serving a prohibition notice in relation to a house in multiple occupation, to notify the local authority of their intention and the use which they intend to prohibit or restrict, where practicable.

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57. **Subsection (8)** provides that an enforcing authority may withdraw a prohibition notice in writing at any time.

### Section 64 - Enforcement notices

58. **Section 64** contains provision in respect of the use of enforcement notices by the enforcing authority in cases where the enforcing authority considers that there is non-compliance with the Chapter 1 duties (other than the employee's duty in section 56). This provision is similar to the power to issue an enforcement notice under the 1997 Regulations. The rules for the serving of notices are contained in section 76 and regulation 27 of the 2006 Regulations.

59. **Subsection (1)** gives an enforcing authority the power to issue an enforcement notice if the enforcing authority consider that a person has failed to comply with the Chapter 1 duties. An enforcement notice can therefore be issued to any person to whom section 53 or 54 applies. This could be an employer, tenant or contractor with obligations, owner, employee or any other person who has control of relevant premises. An enforcement notice however cannot be issued to an employee in respect of compliance with the section 56 duty (see paragraph 66 below)

60. **Subsection (2)** specifies what an enforcement notice must contain. It must

- state that it is considered that there is non-compliance with the Chapter 1 duties,
- specify why the enforcing authority considers there is non-compliance, and
- require the person to take action to remedy the non-compliance within such period as may be specified in the notice. This period must not be less than 28 days. The recipient of the notice has the option to appeal to the court within 21 days of service.

61. **Subsection (3)** allows an enforcing authority, when they issue an enforcement notice, to extend that notice to a workplace (or employees) for which they are not the enforcing authority. This can be done where they are of the opinion that a person has failed to comply with any Chapter 1 duty relating to that other workplace or employees. The notice may include requirements concerning that other workplace or those employees; **subsection (4)** requires the enforcing authority to consult the enforcing authority for the other workplace before including any such requirements in a notice.

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62. **Subsection (5)** makes it a duty for an enforcing authority to consult others, prior to serving an enforcement notice which would oblige a person to make an alteration to relevant premises. This procedure will identify any conflict between the proposal and building and health and safety law and any other relevant legislation. The consultation is required with;

- The building standards verifier within the meaning of the Building (Scotland) Act 2003;
- The Health and Safety at Work enforcing authority, if the relevant premises is a workplace; and
- Any other person whose approval to the alteration is required by an enactment.

63. A local authority could be consulted by an enforcing authority by virtue of being the building standards verifier and/or the Health and Safety at Work enforcing authority. **Subsection (6)** contains a common sense provision that disappplies the requirement for consultation with the building standards verifier in cases where the local authority is the enforcing authority for Part 3 and is also the building standards verifier.

64. **Subsection (7)** provides that a failure to carry out the required consultation prior to enforcement notice issue, does not make the enforcement notice invalid.

65. **Subsection (8)** provides that an enforcing authority may withdraw an enforcement notice by means of a notice at any time before the end of the period specified in the enforcement notice. Where an appeal against the enforcement notice is not pending, the enforcing authority may extend or further extend the period specified in the enforcement notice.

66. **Subsection (10)** prevents an enforcement notice being used to compel employees to comply with the duty to take reasonable care or to co-operate with the employer, which is imposed by section 56.

### Section 65 – Alterations notices

67. **Section 65** introduces a procedure for issuing alterations notices, which can be used at the discretion of the enforcing authority. The alterations notice procedure is new and has been introduced to allow enforcing authorities to require notification of proposed changes in higher risk premises. An alterations notice can only be served in relation to relevant premises which either constitutes a serious fire risk to relevant persons or where, if particular changes are made to the relevant premises, such as to their nature or use, it is likely that a serious fire risk would be posed to relevant persons. Provisions concerning service of notices are contained in section 76 and regulation 27 of the 2006 Regulations.

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68. The issue of an alterations notice does not prevent the appropriate person from undertaking the changes proposed. However, it requires them to notify the enforcing authority in advance of the change(s) being made and allows the enforcing authority the opportunity to intervene if they consider this appropriate, before the changes are made.
69. **Subsection (1)** allows an enforcing authority to serve an alterations notice on an appropriate person in respect of relevant premises, 'appropriate person' is defined in subsection (8).
70. **Subsections (2) and (3)** identify the circumstances under which an alterations notice can be issued. This is where premises would pose a serious risk to relevant persons in respect of fire or where the making of specified changes would be likely to introduce a serious risk.
71. **Subsection (4)** provides that where an alterations notice has been served in respect of premises, the appropriate person (as defined in subsection (8)) must, before making any of the specified changes which may result in a serious risk, notify the enforcing authority of the proposed changes. **Subsection (5)** specifies the changes. These are in respect of the premises; services, fittings or equipment; the use to which the premises are put, or where there is an increase in the quantities of dangerous substances present.
72. **Subsection (6)** gives an enforcing authority the power to include in an alterations notice, a requirement for the appropriate person to keep records of specified information and to include additional specified information when notifying any change to the enforcing authority.
73. The option to specify record keeping in an alterations notice, applies to any record keeping relevant to risk assessment and fire safety arrangements, which has been specified by regulation. This applies to the recording requirements in regulations 8, 9 and 10 of the 2006 Regulations. Regulations 8, 9 and 10 already impose compulsory record keeping requirements in the circumstances specified in the 2006 Regulations (see paragraphs 154 and 155 of this note). An alterations notice can therefore extend this recording requirement to other premises. This optional recording requirement is cross referenced in regulations 8(c) and 10(2)(c) of the 2006 Regulations.
74. Optional information that can be requested to accompany a notification of change is a copy of the risk assessment and a summary of the changes proposed to be made to the existing fire safety measures.
75. **Subsection (7)** allows an enforcing authority to withdraw an alterations notice by means of a notice.
76. **Subsection (8)** defines 'appropriate person' as anyone who has duties under sections 53 or 54.

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### Section 66 – Appeals

77. **Section 66** contains provision for appeal to the sheriff against the operation of a prohibition, enforcement or alterations notice. This section is similar to the appeal provisions of the 1971 Act.
78. Where an appeal is made, **subsection (1)** allows the sheriff to make an order revoking, varying or confirming the notice. The appeal can be made by the person on whom the notice is served or, where it is a prohibition notice, by any dutyholder in respect of the premises to which the prohibition notice relates. **Subsection (2)** specifies that an appeal can be made to the sheriff within 21 days from the day on which a notice is served.
79. **Subsection (3)** provides that in the case of an appeal against an alterations notice or an enforcement notice, the bringing of the appeal has the effect of suspending the operation of the notice until an order is made by the sheriff or until the appeal is abandoned. An appeal against a prohibition notice does not have the effect of suspending the operation of the prohibition notice.
80. **Subsection (4)** provides that the sheriff can, in respect of an appeal against a prohibition notice, issue a suspension order which will have the effect of suspending the operation of the prohibition notice. This will be a temporary arrangement lasting only until an order is made giving a final decision on the appeal or until the appeal application is abandoned.
81. **Subsection (6)** specifies that the procedure for an appeal is by way of summary application.

### Section 67 – Determination of disputes

82. **Section 67** introduces a new non-judicial review procedure for use in situations where the enforcing authority and a dutyholder fail to agree on compliance issues. Use of the procedure is not compulsory but enforcing authorities are expected to make the dutyholder aware of the process where appropriate.
83. **Subsection (1)** provides that a disputed matter can be referred to the Chief Inspector of Fire and Rescue Authorities for determination in cases where the enforcing authority and dutyholder cannot agree on the measures which are necessary to ensure compliance with the Chapter 1 duties, and where both parties agree for the determination procedure in this section to be used. The requirement that a referral can only be made on a joint basis is to prevent misuse of the procedure.
84. Since the Chief Inspector of Fire and Rescue Authorities also has a role as an enforcing authority under Part 3, **subsection (2)** provides that in this case, a determination request can be made to Scottish Ministers.
85. **Subsection (3)** is a regulation-making power.

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86. **Subsection (4)** provides that where there has been an application and a determination has been made, the enforcing authority may not serve an enforcement notice which would be in conflict with the determination. It can be seen from this restriction that the use of the determination procedure is meant to be carried out prior to any formal enforcement action. This is in keeping with good enforcement practice where a dutyholder's failings should be pointed out and an opportunity given to discuss the issues prior to formal enforcement action (other than cases of serious risk). **Subsection (5)** provides that the restriction on an enforcing authority serving an enforcement notice in subsection (4) does not apply where, since the date of the determination, there has been a change to the premises or use of the premises such that the risk to relevant persons has significantly increased.

## CHAPTER 3 – MISCELLANEOUS

### Section 68 – Prohibition of charging employees

87. This section provides that no employer shall charge an employee in respect of anything done or provided by the employer in pursuance of compliance with the Chapter 1 duties. This is similar to previous prohibition on charging imposed in the 1999 Regulations.

### Section 69 – Civil liability for breach of statutory duty

88. **Subsection (1)** states that nothing in Part 3 is to be construed as conferring a right of action in any civil proceedings other than proceedings for recovery of a fine but **subsection (2)** provides that an employee has a right of action in civil proceedings where a breach of a duty imposed on an employer by virtue of Part 3, has caused damage. This maintains the position previously in regulation 9A of the 1997 regulations.

### Section 70 – Consequential restriction of application of Part 1 of Health and Safety at Work etc. Act 1974

89. The 1974 Act has wide potential application and could be used for the control of general fire safety measures in premises which are also subject to more specific fire safety law. **Subsection (1)** disapplies the 1974 Act and any regulations and orders made under that Act in respect of general fire safety for devolved issues, which is now dealt with under the 2005 Act, in order to remove the potential for dual application.

90. **Subsection (2)** restricts the disapplication in subsection (1); the disapplication will not apply where the 2005 Act enforcing authority is also the enforcing authority within the meaning of the 1974 Act. This will allow the dual application potential to continue but, subject to the saving for COMAH premises in article 3 of S.S.I. 2006/458, this will only apply to premises where the same enforcing authority enforces both Acts. This allows enforcement, which may include fire safety and health and safety issues, to be made as a single enforcement action in a joined up approach.

## LEGISLATION OVERVIEW

### **Section 71 – Suspension of terms and conditions of licences dealing with same matters as this Part**

91. This section seeks to ensure that fire safety matters will be dealt with under Part 3 (and related regulations) and not in licensing, certification or registration provisions in other enactments. The section provides that terms, conditions or restrictions contained within a licence, or certification or registration scheme issued under an enactment are of no effect insofar as they relate to a matter that could or have been imposed by Part 3. This is designed to reduce the overlap of regimes. This section re-enacts the position under Section 31 of the 1971 Act which applied to premises with a fire certificate, but with much wider application.
92. Notwithstanding the general application of section 71, some consequential amendments have been made to specific legislation in order to ensure clarity for the user.
93. **Subsection (1)** applies this section to premises which require a licence under an enactment which provides for the licensing of premises or persons and where the licensing authority can impose terms, conditions or restrictions. This section therefore applies to premises with an appropriate licence and also to those which are yet to be issued with a licence.
94. **Subsection (2)** disapplies any term, condition or restriction imposed in connection with the issue of a licence in so far as it relates to any matter in relation to which requirements or prohibitions are or could be imposed by Part 3.
95. **Subsections (3) and (4)** state that the issue of a licence includes its renewal, transfer and variation and that licensing includes registration and certification schemes.
96. **Subsection (5)** provides that where the licensing authority is also the Part 3 enforcing authority then this section does not apply. This will be where relevant premises are subject to Part 3 enforcement by the HSE or the local authority. However this subsection specifically excludes cases where the licensing authority is also a relevant authority. This is where a local authority is a licensing authority and is also a relevant authority because it is a fire and rescue authority. In such cases licensing conditions will have no effect in terms of fire safety in premises subject to Part 3 enforcement by a relevant authority.

## LEGISLATION OVERVIEW

### CHAPTER 4 – OFFENCES

#### **Section 72 – Offences (as amended by S.I. 2005/2060)**

97. **Section 72** contains provision for offences and associated penalties in respect of compliance failure. The most serious offences are subject to a maximum penalty on summary conviction of a fine not exceeding £20,000 or on conviction on indictment to imprisonment not exceeding 2 years or to a fine, or to both. In other cases on summary conviction the statutory maximum applies and on conviction on indictment the penalty is a fine. Other less serious offences are subject to lesser maximum penalties.
98. **Subsection (1)** makes it an offence for a dutyholder to fail to comply with a duty in section 53, 54 or 55, **subsection (2)** makes it an offence for an employee to fail to comply with the general duty of employees at work contained in section 56, and **subsection (3)** extends the offence provision to non-compliance with regulations made under section 57 or 58. In each of these cases, non-compliance alone does not constitute an offence, it must be accompanied by the risk of death or serious injury to relevant persons in the event of fire. These offences therefore are only committed where a serious consequence might result or has occurred.
99. **Subsection (4)** contains a list of specific free standing offences.
100. There are four levels of penalty provision contained in **subsections (5) to (8)**. These penalties and offence provisions are replicated in an abbreviated form in the table in appendix 1.
101. **Subsection (5A)** modifies the penalty for certain offences in respect of ships and certain defence premises.
102. **Subsection (9)** states that it is a defence for a person to prove that they took all reasonable precautions and exercised all due diligence. There are two offences where this defence is excluded by virtue of **subsection (10)**. This is where either there has been an offence under subsection (1) relating to non-compliance with the employer's duty in section 53 or where an offence under subsection (3) relating to non-compliance with a requirement or prohibition to which the person is subject to comply with so far as is reasonably practicable by virtue of regulations and which puts a relevant person at risk of death or serious injury in the event of fire. Regulation 11 of the 2006 Regulations is the only regulation imposing obligations 'so far as is reasonably practicable' and therefore breach of that regulation cannot be defended on the basis of due diligence.

## LEGISLATION OVERVIEW

103. In proceedings in relation to the offence under subsection (1) in respect of a failure to comply with the duty in section 53 (duty to ensure fire safety of employees so far as is reasonably practicable), **subsection (11)** provides that the onus of showing that it was not reasonably practicable to do more than was done is on the accused. This is similar to the provision on the burden of proof in section 40 of the 1974 Act (relating to the employer's duty in section 2 of the 1974 Act to ensure the safety of employees at work so far as is reasonably practicable). The reverse legal burden of proof set out in section 40 of the 1974 Act was considered by the Court of Appeal in *R v Davies (David Janway)* [2002] EWCA Crim 2949 and found to be compatible with the European Convention on Human Rights since it was justified, necessary and proportionate.

104. **Subsections (12) and (13)** create an automatic reverse burden of proof (i.e. the onus is on the accused to show that it was not practicable or reasonably practicable) whenever regulations made under section 57 or 58 impose a "so far as is practicable" or "so far as is reasonably practicable" duty or requirement, the breach of which results in an offence under section 72(3). This is a change from previous fire safety law.

### **Section 73 – Offences by bodies corporate and partnerships**

105. **Subsection (1)** provides that where an offence by a body corporate is proved to have been due to consent or connivance or attributable to neglect by a director, manager, secretary or other similar officer of that body, or a person purporting to act in any such capacity, that person is also guilty of that offence and is liable to be proceeded against and punished.

106. **Subsection (2)** provides that subsection (1) also applies to the acts and defaults of a member in connection with management functions where the affairs of a body corporate are managed by its members.

107. Where an offence has been committed by a partnership, **subsection (3)** provides for a partner to be guilty of an offence as well as the partnership where it is proved that the offence has been committed with the consent or connivance of a partner, or is attributable to their neglect.

### **Section 74 – Offences due to fault of other person**

108. **Subsection (1)** provides that where the commission of an offence by a person under Part 3 is due to the act or default of another person, then the other person can be guilty of the offence. (This other person may or may not be someone who has Chapter 1 duties). **Subsection (2)** provides that the other person can be charged regardless of whether proceedings are taken against the first person. This continues an important provision which was in section 24 of the 1971 Act.

## LEGISLATION OVERVIEW

### Section 75 – Employee’s act or omission not to afford employer defence

109. **Section 75** provides that the act or omission of an employee is not a defence for an employer in the commission of an offence. Regulation 26 of the 2006 Regulations further specifies that the actions of competent persons nominated for particular tasks in accordance with those regulations, similarly do not afford a defence.

## CHAPTER 5 – GENERAL

### Section 76 – Service of documents

110. This section, which is largely modelled on section 38 of the 1971 Act, contains provision in terms of service of documents and should be read with regulation 27 of the 2006 Regulations which contains further provision.

111. **Subsection (1)** lists the methods by which a document can be served on a person, these are;

- By delivering it to the person or by posting or leaving it at their proper address;
- In the case of a body corporate which is not a limited liability partnership, delivering, posting or leaving it with the secretary or clerk of the body;
- In the case of a limited liability partnership, by delivering, posting or leaving it with a member of the partnership; or
- In the case of a partnership, delivering, posting or leaving it with a partner or a person having the control or management of the partnership business.

112. **Subsection (2)** provides that, with certain exceptions, the proper address of any person is his last known address. The exceptions are listed.

113. **Subsection (3)** specifies that in the case of a company or partnership constituted under a law other than that of the UK, the proper address is the principal UK office.

114. **Subsections (4) and (5)** allow the potential recipient of a document to specify another UK address where someone will accept documents.

115. **Subsection (6)** is a regulation-making power.

### Section 77 – Crown application (*as amended by S.I. 2005/2060*)

116. **Subsection (1)** binds the Crown in respect of compliance with Part 3 and regulations made under section 57 or 58, subject to the following provision.

## LEGISLATION OVERVIEW

117. **Subsection (1A)** disapplies some compliance, enforcement and offence provisions in respect of premises where the Defence Fire and Rescue Service is the enforcing authority. This disapplication maintains a consistent approach across GB for fire safety in defence premises.
118. **Subsection (2)** prevents the Crown from being criminally liable in respect of non compliance with Part 3 or regulations made under section 57 or 58, but an enforcing authority can apply to the Court of Session to declare non compliance by the Crown unlawful.
119. **Subsection (3)** provides that the provisions of Part 3 and regulations made under section 57 or 58 apply to persons in the service of the Crown in the same way as they apply to others.
120. **Subsection (4)** confirms that right of entry cannot be exercised in respect of premises occupied by the Crown.
121. **Subsection (6)** applies Part 3 to premises owned or occupied by the Parliamentary Corporation in the same way to premises owned or occupied by the Crown.

### **Section 77A - Application to visiting forces etc (*introduced by S.I. 2005/2060*)**

122. This section applies the fire safety regime in Part 3 to visiting forces and certain international headquarters and defence organisations in the same manner and to the extent that there is application to the Crown where enforcement sits with the Defence Fire and Rescue Service.

### **Section 78 – Meaning of relevant premises (*as amended by S.S.I. 2005/352 and by S.I. 2005/2060*)**

123. Section 78 identifies which premises Part 3 applies to (relevant premises).
124. **Subsection (1)** states that relevant premises means any premises other than the premises excluded in **subsection (2)**. Although slightly amended, the exceptions are similar to the exceptions in the 1997 Regulations.

## LEGISLATION OVERVIEW

125. The exceptions are:

- Domestic premises - defined in **subsection (4)** as premises occupied as a private dwelling including specified parts used in common by the occupants of more than one dwelling. The effect is that Chapter 1 duties do not apply to private dwellings and their communal areas and enforcing authorities have no Chapter 1 enforcement duty or powers in those premises or areas (other than in connection with enforcing the maintenance duty in regulation 24 of the 2006 Regulations). For the purpose of this section, houses in multiple occupation which require a licence are not domestic premises;
- Ships in respect of normal ship-board activities solely carried out by the crew. This exclusion is further qualified by subsection (5A) which includes repair, other than in dry dock. Permanently moored ships or ships on land are not therefore excluded from Part 3;
- Mines and offshore installations;
- A borehole site to which the Borehole Sites and Operations Regulations 1995 apply; and
- Agricultural or forestry undertaking land which is situated away from the undertaking's buildings. This excludes, for example, forests and farmland from Part 3 other than where they are close to buildings.

126. Offshore installations, mines and boreholes are excluded from Part 3. Fire safety on these premises is regarded as requiring particular, tailored provision and therefore outwith devolved legislative competence. Their particular circumstances are covered by specific health and safety legislation; ships are subject to maritime legislation.

127. **Subsection (3)** contains a list of premises for the purpose of subsection (1) and is any place, any installation on land, ships (other than in respect of normal ship board activities by the crew), premises occupied solely for the purposes of the armed forces (or located within them), by visiting forces, by certain international headquarters or defence organisations, any tent or movable structure and vehicles other than vehicles listed in subsection (6). The definition is therefore wide ranging.

## LEGISLATION OVERVIEW

128. **Subsection (5)** lists premises which are not to be included in the definition of domestic premises. This includes a house which requires a licence as a house in multiple occupation (HMO) and other premises which would be subject to HMO licensing other than for the fact that they are subject to:

- A control order<sup>2</sup>; or
- A management control order under the Antisocial Behaviour etc. (Scotland) Act 2004

For the purposes of fire safety legislation, the following are also not considered to be domestic premises: premises providing a care home service; a school care accommodation service, an independent health care service, and a secure accommodation service.

129. **Subsection (6)** contains a description of vehicle types which are outwith the definition of premises and therefore not subject to Part 3.

130. **Subsection (7)** allows the definition of relevant premises used in this section, to be applied to a part of relevant premises.

131. **Subsection (8)** is a regulation making power and **subsection (9)** gives fuller explanation behind the potential use of this power.

### Section 79 – Interpretation of Part 3

132. This section contains a list of defined terms. For a definition of ‘work’ and ‘at work’ reference is made to the 1974 Act and these definitions are reproduced below.

*“(a) “work” means work as an employee or as a self-employed person;  
(b) an employee is at work throughout the time when he is in the course of his employment, but not otherwise;  
(bb) a person holding the office of constable is at work throughout the time when he is on duty, but not otherwise; and]  
(c) a self-employed person is at work throughout such time as he devotes to work as a self-employed person;”*

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<sup>2</sup> Control Orders will be abolished by the Housing (Scotland) Act 2006 and there is a prospective repeal of this provision in that Act

## LEGISLATION OVERVIEW

### Fire Safety (Scotland) Regulations 2006 (S.S.I. 2006/456)

133. The Fire Safety (Scotland) Regulations 2006 (“the 2006 Regulations”) are made under the 2005 Act and contain provisions which are part of the fire safety regime. The 2006 Regulations cannot be looked at in isolation, the fire safety regime in Scotland is split into primary and secondary legislation and dutyholders have obligations under the 2005 Act and these regulations. In some respects the primary legislation (the 2005 Act) contains a broad brush approach to fire safety measures while the 2006 Regulations contain more detailed provisions.
134. Some of these regulations implement EC Directives to the extent that they impose fire safety duties on employers (although their inclusion in the 2006 Regulations will extend their application beyond workplaces).
135. When considering the requirements set out in the 2006 Regulations, it is necessary to consider that there are limitations on the scope of the regulations. The fire safety regulations are made under powers contained in Part 3 the 2005 Act and therefore only apply to the extent that Part 3 applies and creates powers to make such regulations. Furthermore, given that the 2006 Regulations are made under devolved powers, they can only impose obligations to the extent of the devolved legislative competence of the Scottish Parliament for general fire safety.
136. **The obligations set out in the 2006 Regulations must be interpreted only insofar as they relate to general fire safety. They do not impose any obligations in terms of process fire precautions.**
137. Regulations 6, 7, 11, 15 and part of regulation 18 and 21 are closely modelled on provisions in the Dangerous Substances and Explosive Atmospheres Regulations 2002 (‘DSEAR’). The effect of section 70 of the 2005 Act in respect of DSEAR is to remove any general fire safety matters from DSEAR. Fire safety measures covered by the 2005 Act exclude process fire precautions and thus the 2005 Act fire safety regime is restricted to dealing with general fire safety.
138. In undertaking a fire safety risk assessment under the 2005 Act and 2006 Regulations, some acknowledgement of process fire risks and process fire precautions will be required in order to assess the implications for general fire safety.
139. In considering the general fire safety obligations that are imposed on dutyholders by the 2006 Regulations, there are two further principles which should be considered.
140. Firstly, many of the requirements of the 2006 Regulations only require to be complied with ‘where necessary’ (this is specified in individual regulations where this is the case). When ‘where necessary’ appears, the content of the regulation may or may not be appropriate in individual premises, it will depend on the circumstances of each case.

## LEGISLATION OVERVIEW

141. Secondly, the 2006 Regulations do not impose unqualified obligations on dutyholders. For the purposes of the 2005 Act, the 2006 Regulations are fire safety measures by virtue of the definition in schedule 2 of that Act. Regulation 2(4) states that any duties imposed by the regulations on dutyholders are imposed to the extent that the person has duties under those sections. The extent of the obligations will vary. In section 53(2)(b) and 53(3)(b) an employer must take such fire safety measures 'as are necessary.....'. In section 54(2)(b) and 54(5)(b) a dutyholder must take fire safety measures 'as in all the circumstances it is reasonable for a person in his position to take.....'. These qualify the obligations to comply with the duties in sections 53 and 54.
142. Reference in the 2006 Regulations to expressions which are used in the 2005 Act have the same meaning as the expressions in the 2005 Act.
143. **Regulations 1 and 2** contain citation, commencement and interpretation provisions.
144. **Regulation 3** requires that the assessment review which is imposed by sections 53(3) and 54(5) should be carried out regularly to keep it up to date and a review should also be carried out where there is reason to suspect it is no longer valid or there has been significant change in related matters including change to premises or organisation of work or a change to special, technical or organisational measures (STOM).
145. There is a definition of STOM in regulation 2. STOM is relevant only to workplaces in connection with work processes. STOM are defined as certain measures taken in connection with a work process, and the measures included within STOM are based on those listed as technical aspects of work in the definition of "work processes" found in DSEAR. The effect of this is that where regulation 3 requires the review of an assessment when there is a significant change to STOM, that particular duty only ever applies to workplaces.
146. STOM are measures designed to minimise the likelihood or reduce the intensity of fire from a work process where those measures are taken in accordance with relevant statutory provisions. "Work process" is defined in regulation 2. Measures which fall within the scope of STOM are not imposed by the 2006 Regulations, but they must be taken into consideration as STOM may clearly have an effect on general fire safety.

## LEGISLATION OVERVIEW

147. **Regulation 4** requires an employer to carry out or review a section 53 or 54 assessment in relation to the risks to young persons from fire before employing a young person. Young person is defined in regulation 1 and is someone under the age of 18. **Regulation 5** lists the factors which must be taken account of by employers, specifically for the section 53 assessment or assessment review. These matters which must be taken into account are to be taken into account only in respect of harm caused by fire. Regulation 3 of the 1999 Regulations contains similar requirements in terms of general health and safety.
148. However regulations 4 and 5 do not apply in relation to occasional or short-term work regulated as not being harmful, damaging or dangerous to young people in a family undertaking by virtue of regulation 28(1).
149. **Regulation 6** relates to matters which must be taken into account by a dutyholder when carrying out or reviewing an assessment where there is a dangerous substance present. The wording of regulation 6 is in similar terms to regulation 5 of DSEAR, but it must be remembered that the 2006 Regulations are restricted to covering the devolved matter of general fire safety
150. 'Dangerous substance' is defined in regulation 2. The definition is closely modelled on the definition in DSEAR but is slightly different. It applies to substances which are explosive, oxidising, extremely flammable, highly flammable or flammable and a substance or preparation because of its physico-chemical or chemical properties and the way used or is present creates a risk to the safety of persons from fire, and dusts which can form an explosive atmosphere. Essentially the definition of dangerous substance for the fire safety regime is substances which are explosive, within all ranges of flammability, or oxidising.
151. Although the outcome of the assessment in the 2006 Regulations is restricted to general fire safety matters, the assessment must take into account wider aspects of dangerous substances. The requirement applies irrespective of the quantity of dangerous substance on the premises.
152. Regulation 6 then lists the matters which must be taken into account in the assessment or review of the assessment. Although many of these matters concern fire safety in relation to work processes, and are hence not duties imposed under the 2006 Regulations (which relates only to general fire safety), these matters will inform the risk assessment in terms of general fire safety outcomes.
153. **Regulation 7** imposes a prohibition on work activity where there is a dangerous substance unless the Chapter 1 duty has been fulfilled.
154. **Regulation 8** identifies circumstances where there is a requirement for information relative to an assessment to be recorded. This is where there are 5 or more employees or a licence or registration is required or an alterations notice has been issued which requires this. The threshold of 5 includes employees who

## LEGISLATION OVERVIEW

may work in another location (the same as regulation 10). **Regulation 9** lists the information that should be recorded.

155. **Regulation 10** requires a dutyholder when taking fire safety measures as a result of the assessment or review of an assessment in section 53 or 54, to make appropriate arrangements for effective planning, organisation, control, monitoring and review of the fire safety measures. What is appropriate will depend on the size of the undertaking and nature of activities. Paragraph 2 specifies the circumstances where these arrangements must be recorded. These circumstances are the same as the recording requirement in regulation 8.
156. **Regulation 11** imposes obligations on all section 53 and 54 dutyholders where there is a dangerous substance in relevant premises. The dutyholder must eliminate or reduce the risk to the safety of relevant persons so far as is reasonably practicable. To achieve this, also if reasonably practicable, a dangerous substance, or its use, must be replaced with a substance or process which eliminates or reduces risk. Where it is not reasonably practicable to apply measures to eliminate risk, measures must be taken, consistent with the assessment, to control the risk and mitigate the detrimental effects of fire. The schedule to the 2006 Regulations contains associated measures to control risk. The dutyholder must also arrange safe handling, storage and transport of dangerous substances; and maintain any conditions for the elimination or reduction of risk. Regulation 11 is similar to the wording of regulation 6 of DSEAR but is restricted in its operation to the narrower definition and focus of dangerous substance in the 2006 Regulations and applies only general fire safety provision.
157. **Regulation 12** contains specific requirements in respect of means for fighting fire and giving warning. A dutyholder must, where necessary, to ensure the safety of relevant persons, ensure that premises are equipped with appropriate means for fighting fire and giving warning in event of fire. Non automatic fire-fighting equipment must be easily accessible, simple to use and signed. These requirements must be considered as specific requirements which may or may not be necessary in premises but the requirement in section 53 and 54 ( as read with schedule 2 to the 2005 Act) to carry out fire safety measures, including '*measures in relation to the means of fighting fires....*' and '*measures in relation to the means of detecting fires....and giving warning in the event of fire....*' is wider ranging in its scope. The detailed content of this regulation should not be seen as restricting the wider potential application of the duties to take fire safety measures through section 53 or 54.
158. There is also an obligation, where necessary, to take fire-fighting measures and nominate competent persons to implement these measures; and a requirement to arrange any necessary contacts with external emergency services.
159. **Regulation 13** contains specific provisions for means of escape which are imposed where necessary. These are specific provisions but must be considered alongside the more general requirement in sections 53 and 54 to take fire safety measures including '*measures in relation to the means of escape.....*' and '*measures for securing that.....the means of escape.....can be safely and*

## LEGISLATION OVERVIEW

*effectively used*. The content of this regulation cannot be seen as restricting the wider potential application of these duties to take fire safety measures through section 53 or 54.

160. **Regulation 14** requires a dutyholder to put in place procedures for serious and imminent danger from fire including persons to operate and to put them into operation where necessary. This effectively requires an emergency fire action plan to be established. To allow the implementation of those procedures, competent persons should be nominated for evacuation of the premises.
161. Paragraph 1(c) deals with areas where access should only be allowed to persons with adequate safety instruction. Dutyholders should restrict access to persons without this instruction. This duty is not related to any restriction that has been imposed by the use of a Prohibition Notice by an enforcing authority and does not allow persons to access areas where there is such a prohibition or restriction.
162. **Regulation 15** contains further provision for dangerous substances which is closely modelled on the wording in regulation 8 of DSEAR. However, regulation 15 does not apply where there is only slight risk to relevant persons because of the quantity of dangerous substances and where measures taken under regulation 11 are sufficient to control the risk.
163. Where regulation 15 does apply, dutyholders are required to provide, to the extent that it is relevant to general fire safety, information on emergency arrangements, systems and action which must be taken, warning and escape provision. Information on emergency arrangements must be available including work hazards and hazard identification arrangements for the specific hazards likely to arise. Warning and other communication systems should be established to enable appropriate response, including remedial actions and rescue operations.
164. **Regulation 16** requires maintenance of premises and maintenance of fittings, equipment and devices provided under the 2006 Regulations; or any enactment where they are provided in conjunction with fire safety measures. There is also provision for a dutyholder to make arrangements with occupiers and owners of other parts of a building to ensure these maintenance requirements.
165. **Regulation 17** requires a dutyholder to nominate one or more competent persons to assist in undertaking measures to comply with the Chapter 1 duties, and arrange time and means to achieve the function. Where there is more than one person, arrangements should be made for co-ordination. Where the nominated person is not in the dutyholder's employment then there is an obligation to supply them with information. There are exclusions in this regulation for certain self-employed persons and partners.
166. **Regulation 18** imposes obligations on employers: they must give information to employees as specified in paragraph 1 and where there is a dangerous substance, the information in paragraph 3.

## LEGISLATION OVERVIEW

167. An employer, before employing a child, must give the person with parental responsibilities, information on risks to that child identified by the section 53 risk assessment, fire safety measures taken consequent to the assessment and any risks notified to him by another person having duties under section 53 or 54.
168. Paragraph 3 lists information on dangerous substances that an employer must provide to employees. It should be noted that the information is not restricted to fire safety issues: all aspects of dangerous substances are included to the extent that they are necessary to determine general fire safety measures. This is similar to regulation 9 of DSEAR.
169. **Regulation 19** requires a dutyholder to give information on risks, fire safety measures and the identity of a person nominated to implement procedures under regulation 14, to the employer of employees from an outside undertaking working in the premises. Instruction and information on risks and the identity of that nominated person must also be given to those employees.
170. **Regulation 20** imposes obligations on an employer to ensure the employees have adequate fire safety training in the circumstances listed. Paragraph 2 sets out the requirements in respect of training: it should include instruction and training on precautions and actions to be taken by an employee to safeguard themselves and others on premises, be repeated periodically, adapted to take account of new or changed risks from fire, be provided in a manner appropriate to the risk assessment and take place during working hours.
171. Where responsibility in premises is shared between dutyholders, **Regulation 21** requires dutyholders to co-operate with each other to enable each to comply, to co-ordinate measures and inform each other of risks. Where the premises may contain an explosive atmosphere, paragraph 2 introduces the concept of a dutyholder with 'overall responsibility'. That person must co-ordinate implementation of the measures required to protect persons from the explosive atmosphere. The text of this regulation is modelled on regulation 11 of DSEAR but the regulation applies only in respect of Chapter 1 duties.
172. **Regulation 22** contains a requirement for employees while at work, to inform their employer or an employee with fire safety responsibility where there is serious and imminent danger, or shortcomings in an employer's protection arrangements where the matters affect the persons own fire safety or in connection with their own work activities.
173. **Regulations 23 and 24** do not relate to the safety of relevant persons, rather they are designed to ensure that facilities for fire-fighters are maintained. In regulation 23 dutyholders are required to maintain the premises and any facilities, equipment and devices for the use by or for the safety of fire-fighters. This applies to anything under the 2005 Act or any other enactment including those revoked.

## LEGISLATION OVERVIEW

174. **Regulation 24** applies the maintenance provision in regulation 23, to the common parts of private dwellings and the duty applies to a person with control of the common areas and in some circumstances the owner. The regulation also specifies the parts of the Act which specifically apply in extending this provision.
175. Section 61(8) of the 2005 Act enables a fire and rescue authority or a joint fire and rescue board to delegate their fire safety enforcement functions to persons prescribed in regulations, in relation to specified workplaces. **Regulation 25** prescribes the Office of Rail Regulator (“ORR”) for this purpose. This reflects the transfer of safety functions in relation to railways from HSE to ORR, in the Railways Act 2005, and enables the ORR to take on fire safety enforcement functions should an authority or board enter into such arrangements with them.
176. Section 75 provides that the act or omission of an employee is not a defence for an employer charged with an offence. **Regulation 26** further provides that the competent persons nominated under certain regulations are also persons whose acts or omissions do not offer an employer a defence.
177. **Regulation 27** contains provision for the service of documents and is additional to the provisions in section 76.
178. **Regulation 28** disapplies some of the regulations in specified circumstances. This includes, the regulations concerning dangerous substances which are modelled on provisions in DSEAR do not apply to means of transport regulated by international agreements and certain other provisions; and the provision on door fastening at regulation 13(2)(f) does not apply to prisons and other places of lawful detention but with the proviso that the fire safety of relevant persons should be ensured so far as is possible.

## Consequential Modifications and Savings

179. S.S.I. 2006/457 and S.S.I. 2006/475 make consequential modifications and savings in respect of fire safety matters to Scottish primary and subordinate legislation and to UK primary and subordinate legislation in respect of its application in Scotland. These changes fall into the following categories:

- Amendments introduced which change the consultation requirement in other legislation to ensure that consultation takes place with the 2005 Act enforcing authority;
- Amendments which remove duplication or conflict, or update legislation by referring to the fire safety regime introduced by the 2005 Act;
- Savings provisions; and
- Repeals and revocations

180. When considering UK or GB legislation in terms of its application to Scotland, account needs to be taken of any changes which modify the legislation specifically in its application to Scotland. Other consequential changes or modifications, such as those introduced by the Regulatory Reform (Fire Safety Order) 2005 may have effect in England and Wales only and will have no effect on UK or GB legislation in its application to Scotland.

### **SAVINGS**

#### **Fire Precautions Act 1971**

181. Existing Prohibition Notices issued under section 10 of the 1971 Act continue in force and are deemed to be prohibition notices issued under section 63 of the 2005 Act by virtue of the saving provision in S.S.I. 2006/475

#### **The Fire Precautions (Sub-surface Railway Stations) Regulations 1989**

182. These regulations which are issued under the 1971 Act are saved by S.S.I. 2006/475 even though the 1971 Act is revoked. They continue in force as if made under section 58 of the 2005 Act. These regulations will therefore continue to apply to sub-surface stations in addition to the fire safety regime in the 2005 Act.

#### **The Fire Precautions (Workplace) Regulations 1997**

183. A saving provision in article 3 of S.S.I. 2006/457 continues the disapplication of certain fire safety duties to emergency workers.

### **The Control of Major Accident Hazards Regulations 1999**

184. These regulations are saved by article 3 of S.S.I. 2006/458 from the disapplication in section 70 of the 2005 Act. The effect is that these regulations continue to impose fire safety measures in sites to which these regulations apply, this is in addition to the 2005 Act enforcement. This retention of the dual application to COMAH sites is seen as essential to HSE's enforcement powers in such sites.

## **AMENDMENTS**

### **The Celluloid and Cinematograph Film Act 1922**

185. A reference in the Act to the 1997 Regulations is updated by S.S.I. 2006/475 to refer to Part 3 of the 2005 Act. The effect of this is that the 1922 Act does not apply to a workplace within the meaning of Part 3 of the 2005 Act.

### **The Pet Animals Act 1951**

186. A provision is inserted into this Act by S.S.I. 2006/475 . This amendment is to ensure that conditions in pet shop licences do not address fire safety matters covered by Part 3 of the 2005 Act.

### **The Caravan Sites and Control of Development Act 1960**

187. New sections are inserted into the Act by S.S.I. 2006/475 with effect that site licences and model standards cannot attach conditions or standards which relate to fire safety measures that could be covered by Part 3 of the 2005 Act.

### **The Theatres Act 1968**

188. New sections are inserted by S.S.I. 2006/475 which have the effect of ensuring that licences do not impose requirements in respect of fire safety, where the licence is for premises covered by Part 3 of the 2005 Act.

### **The Gaming Act 1968**

189. Changes are made to this Act by S.S.I. 2006/475 in respect of powers of entry and licences to reflect the 2005 Act enforcing authority where Part 3 of the 2005 Act applies.

### **The Health and Safety at Work etc. Act 1974**

190. The consultation requirement in section 23 of this Act is updated by S.S.I. 2006/475 so that consultation is now with the 2005 Act enforcing authority, or in cases where Part 3 of the 2005 Act does not apply, with the relevant authority.

## LEGISLATION OVERVIEW

### **The Safety of Sports Grounds Act 1975**

191. This Act is amended by S.S.I. 2006/475 so that a condition of a safety certificate for a sports ground may not require a person to contravene Part 3 of the 2005 Act and requires the local authority to amend such a certificate if it would have that effect.

### **The Licensing (Scotland) Act 1976**

192. This Act is amended by S.S.I. 2006/475 so that the requirement to consult which was previously a requirement to consult the fire and rescue authority is now with the Part 3 enforcing authority, or, where Part 3 does not apply to the premises, the relevant authority.

### **The Local Government, Planning and Land Act 1980**

193. This Act is updated by S.S.I. 2006/475, so that the power in section 152(1)(a) now relates to the conferral on an urban development corporation of the functions of an enforcing under Part 3 of the 2005 Act.

### **The Zoo Licensing Act 1981**

194. This Act is amended by S.S.I. 2006/475. Section 3 of the 1981 Act sets out the bodies which a local authority shall consult when they receive an application for a zoo licence. Section 3(2)(c) is amended to provide that a local authority who receives the application for a zoo licence will have to consult with an enforcing authority within the meaning of section 61 of the 2005 Act where Part 3 of that Act applies and, if the enforcing authority is not also the relevant authority for the area, the relevant authority within the meaning of section 6 of the 2005 Act. Where Part 3 of the 2005 Act does not apply, however, the local authority is only obliged to consider representations made by the relevant authority for the area.

### **The Civic Government (Scotland) Act 1982**

195. The sections of this Act which require consultation with a relevant authority are updated by S.S.I. 2006/475 so that consultation is with the Part 3 enforcing authority or, where Part 3 does not apply, with the relevant authority. New subsections are inserted which restrict the conditions or restrictions that can be imposed by a licence in preference to Part 3 of the 2005 Act.

### **The Cinemas Act 1985**

196. This Act is amended by S.S.I. 2006/475. New subsections are inserted which restrict the conditions or restrictions that can be imposed by a licence under the Act, by preventing them from relating to requirements or prohibitions that could be imposed by or under Part 3 of the 2005 Act. Existing references to appropriate relevant authority are changed so that the meaning is the enforcing authority for Part 3 of the 2005 Act, or where Part 3 does not apply, the relevant authority.

## LEGISLATION OVERVIEW

### **The Fire Safety and Safety of Places of Sport Act 1987**

197. This Act is amended by S.S.I. 2006/475 so that a condition of a safety certificate for a regulated stand must not require a person to contravene Part 3 of the 2005 Act or regulations made under it. It also requires the local authority to amend such a certificate if it appears to them to have that effect. Part 1 of this Act which made changes to the 1971 Act, is repealed.

### **The Environment and Safety Information Act 1988**

198. This Act previously required a relevant authority to maintain a register with details of prohibition notices issued. This requirement has been updated and now applies to all Part 3 enforcing authorities issuing prohibition notices under section 63 of the 2005 Act.

### **The Gambling Act 2005**

199. This Act is updated by S.S.I. 2006/475 to reflect Part 3 of the 2005 Act by making reference to relevant authority, Part 3 enforcing authority and application to the Crown.

### **The Housing (Scotland) Act 2006**

200. Part 5 of this Act contains a replacement for the existing HMO licensing system. Changes to Part 5 of this Act are made by S.S.I. 2006/475. References in Part 5 to fire and rescue authority are replaced with references to the 2005 Act enforcing authority.

### **The Construction (Health, Safety and Welfare) Regulations 1996 (S.I. 1996/1592)**

201. A replacement regulation 33 is inserted into these regulations by S.S.I. 2006/457. The effect is to make enforcement of regulation 21 and the fire related aspects of regulations 19 and 20 in occupied construction sites, the responsibility of the 2005 Act enforcing authority (previously it was solely the responsibility of the fire and rescue authority).

202. The fire safety regime in these regulations will co-exist with the fire safety regime in Part 3. Since the enforcing authority for these regulations is the same as in the 2005 Act, the disapplication in section 70 of the 2005 Act therefore has no effect as a result of subsection 70(2).

### **The Residential Establishments – Child Care (Scotland) Regulations 1996 (S.I. 1996/3256)**

203. The previous requirement in these regulations for a manager to put in place fire precautions and take account of the recommendations of the fire and rescue service are removed by S.S.I. 2006/457 for premises to which Part 3 of the 2005 Act applies.

## LEGISLATION OVERVIEW

### **The Regulation of Care (Requirements as to Care Services) (Scotland) Regulations 2002 (S.S.I. 2002/114)**

204. The fire related provisions have been removed by S.S.I. 2006/457 in situations where Part 3 of the 2005 Act applies to premises.

## **PRINCIPAL REPEALS AND REVOCATIONS**

### **Fire Precautions Act 1971**

205. The whole Act is repealed by S.S.I. 2006/475 but see related savings provisions described at paragraphs 181 and 182 above.

### **The Fire Precautions (Loans) Act 1973**

206. This Act provided for the making of loans by local authorities to meet certain expenditure occasioned by the 1971 Act. The whole act is repealed by S.S.I. 2006/475

### **The Building (Scotland) Act 2003**

207. This act included an amendment to the 1971 Act. Due to the revocation of the 1971 Act, this amendment is revoked by S.S.I. 2006/475 .

### **The Fire Certificates (Special Premises) Regulations 1976**

208. The whole regulations are revoked by S.S.I. 2006/457. Enforcement of these regulations sat with the Health and Safety Executive. With revocation, the premises which were previously subject to these regulations are now subject to the fire safety regime in the 2005 Act and enforcement in the premises, will sit with the appropriate 2005 Act enforcing authority by reference to section 61(9) of that Act.

### **The Electrical Luminous Tube Signs (Scotland) Regulations 1990**

209. The whole regulations are revoked by S.S.I. 2006/457. The provision of fire-fighters' switches to electrical luminous tube installations is now subject to control through Building Regulations for new installations and regulation 23 and 24 of S.S.I. 2006/456 for ongoing maintenance.

### **The Health and Safety (Safety Signs and Signals) Regulations 1996**

210. The reference to the 1976 Regulations in these regulations is revoked by S.S.I. 2006/457. The fire safety signs requirement in these regulations will co-exist with the fire safety regime in Part 3.

## LEGISLATION OVERVIEW

### **The Management of Health and Safety at Work Regulations 1999**

211. The references in these regulations to the 1997 Regulations, are revoked by S.S.I. 2006/457. The effect is to remove references to general fire safety from the regulations.

### **The Fire Precautions (Workplace) Regulations 1997 and The Fire Precautions (Workplace) (Amendment) Regulations 1999**

212. Both these regulations are revoked in whole by S.S.I. 2006/457 but see the related saving provision described at paragraph 183 above.

**LEGISLATION OVERVIEW**

**Appendix 1**

**Reference table of Offences**

Brief description of Offence	Offence provision	Penalty provision	Duty (where applicable)
	section	section	section
Assault, obstruct or hinder an employee of a relevant authority who is discharging a fire safety enforcement function	39	39(4)	-
Employer fails to ensure safety of employees*	72(1)	72(5) or (5A)	53(1)
Employer fails to carry out an assessment*	72(1)	72(5) or (5A)	53(2)(a)
Employer fails to take fire safety measures*	72(1)	72(5) or (5A)	53(2)(b) or (3)(b)
Employer fails to review an assessment*	72(1)	72(5) or (5A)	53(3)(a)
Employer fails to implement fire safety measures on basis of considerations*	72(1)	72(5) or (5A)	55(2)
Dutyholder fails to carry out an assessment*	72(1)	72(5) or (5A)	54(2)(a)
Dutyholder fails to take fire safety measures*	72(1)	72(5) or (5A)	54(2)(b) or (5)(b)
Dutyholder fails to review an assessment*	72(1)	72(5) or (5A)	54(5)(a)
Dutyholder fails to implement fire safety measures on basis of considerations*	72(1)	72(5) or (5A)	55(2)
Employee fails to take reasonable care*	72(2)	72(6)	56(a)
Employee fails to cooperate with employer*	72(2)	72(6)	56(b)
Failure to comply with regulations*	72(3)	72(5) or (5A)	
Failure to comply with Enforcement Officer request	72(4)(a)	72(7)	62(2)(c)
Pretend to be Enforcement Officer	72(4)(b)	72(8)	-
Obstruct Enforcement Officer	72(4)(c)	72(7)	-
Obstruct person accompanying Enforcement Officer	72(4)(d)	72(7)	-
Failure to comply with prohibition notice	72(4)(e)	72(5) or (5A)	-
Failure to comply with alterations notice	72(4)(f)	72(5) or (5A)	-
Failure to comply with enforcement notice	72(4)(f)	72(5) or (5A)	-
Charge employees	72(4)(g)	72(7)	68
Make a false entry	72(4)(h)	72(7)	-
Give false information	72(4)(i)	72(7)	-

\* where this puts a relevant person at risk of death, or serious injury, in the event of fire.

## LEGISLATION OVERVIEW

<b>Penalty provision</b>	<b>Penalty on summary</b>	<b>Penalty on indictment</b>
Section 39(4)	9 months or level 4 fine	Not applicable
Section 72(5)	£20,000	2 years and a fine
Section 72(5)**	level 5 fine	2 years and a fine
Section 72(6)	level 5 fine	fine
Section 72(7)	level 5 fine	Not applicable
Section 72(8)	level 3	Not applicable

\*\* modified penalty applies in respect of some specific premises listed in section 72(5A)

**Reference table of dutyholder obligations**

1. This table identifies which sections of Part 3 of the 2005 Act and which regulations of the 2006 Regulations apply to the different category of dutyholder. The dutyholder descriptors are not mutually exclusive, a dutyholder may fall into more than one category and attract the relevant appropriate obligations imposed. For example, an owner may fall within the descriptions 4 or 5 in the table.

<b>1. Person with control or ownership of common area of private dwelling</b>						
<b>2. Employee</b>						
<b>3. Tenant or contractor with maintenance or safety obligations</b>						
<b>4. Owner – where section 54(3) apply</b>						
<b>5. Other person with control of premises</b>						
<b>6. Employer</b>						
<b>Section 53</b>	✓	×	×	×	×	×
<b>54</b>	✓	✓	✓	✓	×	×
<b>55</b>	✓	✓	✓	✓	×	×
<b>56</b>	×	×	×	×	✓	×
<b>Regulation 3</b>	✓	✓	✓	✓	×	×
<b>4</b>	✓	×	×	×	×	×
<b>5</b>	✓	×	×	×	×	×
<b>6</b>	✓	✓	✓	✓	×	×
<b>7</b>	✓	✓	✓	✓	×	×
<b>8</b>	✓	✓	✓	✓	×	×
<b>9</b>	✓	✓	✓	✓	×	×
<b>10</b>	✓	✓	✓	✓	×	×
<b>11</b>	✓	✓	✓	✓	×	×
<b>12</b>	✓	✓	✓	✓	×	×
<b>13</b>	✓	✓	✓	✓	×	×
<b>14</b>	✓	✓	✓	✓	×	×
<b>15</b>	✓	✓	✓	✓	×	×
<b>16</b>	✓	✓	✓	✓	×	×
<b>17</b>	✓	✓	✓	✓	×	×
<b>18</b>	✓	×	×	×	×	×
<b>19</b>	✓	✓	✓	✓	×	×
<b>20</b>	✓	×	×	×	×	×
<b>21</b>	✓	✓	✓	✓	×	×
<b>22</b>	×	×	×	×	✓	×
<b>23</b>	✓	✓	✓	✓	×	×
<b>24</b>	×	×	×	×	×	✓